

Testimony of
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On S.B. 652
Before the House Government Operations Committee
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Mr. Chairman and Members of the Committee:

Laws dictating what the government can be sued for and how they can be sued, have evolved over the years. Forty-nine of the states in the United States, except Louisiana, adopted English Common Law as the basis for their legal system where it was impossible to sue the sovereign. In pre-Jacksonian America the concept of sovereign immunity made it impossible to sue a government. Today there are different laws depending on whether it is the federal, state or local government being sued.

In Michigan, the basic rule is that you can sue the government in a tort action for accidents, wrongful acts, errors and omissions, or when a governmental employee does something to you that you could sue a private person for.

In Michigan in 1842 the legislature established a Board of State Auditors. That Board evolved into hearing claims against the state. A provision of the 1908 Constitution in Article 6, Section 20 stated, " the Board of State Auditors shall examine and adjust all claims against the state not otherwise provided for by general law."

The Board of State Auditors then consisting of the Secretary of State, State Treasurer and Commissioner of the State Land Office heard those claims until 1929 when that duty was transferred to the State Administrative Board, a body which in 1929 consisted of the Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, Auditor General, Superintendent of Public Instruction and State Highway Commissioner and was "vested with the discretionary power and authority to hear, consider and determine claims presented to said Board against the state of Michigan, arising from or by reason of negligence, malfeasance or misfeasance of any state officer or employee, and to allow same and order payment thereof."

It was not until 1939 that the legislature established a Court of Claims in PA 135 outside of the Executive Branch. Today claims against the state under \$1,000 are still heard by the State Administrative Board. Under that 1939 legislation the presiding Circuit Judge of the state designed one or more circuit judges from around the state to act as a judge on the Court of Claims. In 1961 the Supreme Court Administrator, as opposed to the "presiding circuit judge of the state", was given the

authority to designate circuit judges from throughout the state to sit as a judge on the Court of Claims.

It was not until 1978 that the legislature, by enacting PA 164, designated the Court of Claims as "a function of the circuit court for the thirtieth judicial circuit."

On January 1, 1979 all full-time employees of the Court of Claims and cases were transferred to the 30th Circuit, and the state agreed to reimburse Ingham County for the costs of operating the Court of Claims and an additional judgeship was added to the 30th Circuit to help with the caseload from the Court of Claims.

Article VI, Section 26 of the 1963 Constitution states, "Statutory courts in existence at the time this constitution becomes effective shall retain their powers and jurisdiction, except as provided by law, until they are abolished by law." The Convention Comment on that provision states:

" List of statutory courts... and the Court of Claims. These courts are unchanged by this section, but the legislature has the power to abolish them or transfer their duties elsewhere."

The legislature therefore has the constitutional power to transfer the Court of Claims and cases to the Michigan Court of Appeals as provided for in S.B. 652. Doing so would mean that Court of Claims cases would no longer be adjudicated exclusively by Ingham County Circuit Judges, who are elected only by Ingham County voters.

S.B. 652 would require the Chief Justice of the Supreme Court to assign four judges from the Court of Appeals to a pool to hear Court of Claims cases. Those four judges must come from at least two of the four Court of Appeals districts. New cases can be filed in any Court of Appeals district. The district offices for the four Court of Appeals districts are currently located in Detroit, Troy, Lansing and Grand Rapids. Court of Claims proceedings would take place in the district that the Court of Appeals judge assigned the case sits.

A Court of Appeals judge assigned to a Court of Claims case would have been elected by voters from 25% of the state (approximately 2,470,910), not by voters from a county that accounts for just 3% of Michigan's population (280,895). Under S.B. 652, the Court of Claims will have judges from at least two of the Court of Appeals districts, meaning that at least half (and possibly 100%) of Michigan's population will be represented on the Court of Claims.

This is a question of public policy for the legislature to decide.

Over the years the legislature decided to have claims against the state heard by boards in the executive branch of state government. The legislature 74 years ago

moved claims against the state to the judicial branch of state government, except for claims of less than \$1,000. For 40 years Circuit Judges from across the state comprised the Court of Claims, then in was transferred 34 years ago to just one of 57 circuit courts in the state--- the 30th Circuit. This process has never been one 'fixed in stone'.

This bill also expands the jurisdiction of the Court of Claims to hear and determine any claim or demand or any demand for monetary, equitable, or declaratory relief or any demand for an extraordinary writ against the State or any of its departments or officers. In other words a case of statewide significance would be handled at the trial level by a judge elected by voters from a district comprised of 25% of state voters.

S.B. 652 is a reasonable public policy choice. I urge the Government Operations Committee to favorably report this bill out to the House floor.